COMMONWEALTH OMBUDSMAN

*OAIC ref: MR23/00438*
*Ombudsman ref: FOI-2023-10033*

4 April 2025

**Ms Meka Larsen**
Acting Assistant Director
Freedom of Information Case Management Branch

Dear Ms Larsen,

**MR 2023/00438- Submissions**

1. I refer to your letter of 21 March 2025 and the Direction issued under s 55(2)(e)(ii) of the FOI Act.

2. Ultimately our position is that this review should be discontinued under s 54W(a)(i) as it is misconstrued or lacking in good faith.

**Documents requested**

3. I have attached the requested documents – documents that record searches conducted and the results of searches – to the email containing these submissions:

    a. Consultation to PID team

    b. PID team initial consultation response

    c. Further PID consultation response and attaching documents

    d. Recent PID confirmation of search processes

**Background and submissions**

4. The applicant has a history of making very specific and technically worded FOI applications. On 15 December 2023, this Office wrote to the applicant setting out the difficulty the Office was experiencing in processing the applicant's many requests. This document was provided to your office on 19 December 2023.

5. I note that the applicant is very familiar with the FOI process, having engaged extensively with our Office and other government organisations, in particular about a specific Public Interest Disclosure (PID). In general, their requests have been directed at prosecuting a grievance with the APSC and Ombudsman's investigation findings in relation to a PID. Our staff have sought to deal with the request in good faith, however the applicant's engagement with the Office as well as their correspondence with your Office indicate that this request is directed to a collateral purpose, being to effectively require a review of the PID Investigator's decision, the evidence and the findings.

6. As set out in our correspondence of 19 December 2023, this request was expressed in a complicated and very specific way. It was premised on a series of propositions and concerns about previous reviews and investigations and the applicant's assumptions and beliefs about what the findings that the Australian Public Service Commission's PID investigator must have been.

7. In relation to this FOI request, the applicant has implied that they expected a no documents decision. In their email of 30 August 2023 to your Office they write:

> "The error in Ms Hanlon's decision is clear. Ms Hanlon has stated unequivocally that documents evidencing the only lawful mode of conducting a role review do not exist (much as the Federal Court has conceded)"

8. The applicant has taken issue with the inclusion of the following sentence in the original decision letter:

> "While there are other documents which could be considered relevant to the subject of your request the Office is not in the possession of a documented decision of the Agency Head of the Federal Court of Australia Statutory Agency evidencing the matters listed in your request."

9. We take the applicant's point that this may be confusing. However, it is evident that Ms Hanlon considered the scope of the request and determined that no documents existed, as required at law.

10. The applicant has outlined what they are seeking:

"I would like the Information Commissioner to compel the production of the "other documents which could be considered relevant to the subject of [my] request" and assess, according to law, whether or not the documents are actually relevant to the subject of my request".

11. We can advise that the three documents that were flagged as being potentially relevant at first instance have already been released to the applicant in full. They were provided to your Office on 19 December 2023.

12. It is our submission that the provision of these documents negates the need to consider whether they are or are not in scope. Accordingly, the matter should now be concluded.

13. For completeness, we advise that the documents were identified by Mark Anstey, the officer responsible for undertaking searches in this matter. Mark Anstey is not an FOI decision maker. The original decision maker then took into account Mr Anstey's views on the scope of the application, given Mr Anstey's detailed experience with the applicant, but ultimately made her own decision as to the scope of the request. This too is set our in Ms Hanlon's email of 19 December 2023. Our Office maintains that full and reasonable searches were conducted by the relevant team (the Public Interest Disclosure (PID) team) at the time of processing this request. The individual responsible for undertaking these searches, Mark Anstey, is the relevant subject matter expert in relation to the Public Interest Disclosure (PID) that this application relates to. He has detailed knowledge of the substantive investigation as well as the documents stored on file. Given Mr Anstey's involvement with the applicant's requests [redacted] and personal knowledge of the original investigation, the Office maintains that it is reasonable for the FOI decision maker to rely on his searches. What is evident on the search records attached is that the decision maker, Jodie Hanlon, met with Mark Anstey to discuss the matter, and then engaged in a detailed conversation about what the request might possibly capture.

14. The PID team ordinarily searches their case management system Resolve (which is the primary records management system for the PID team) as well as Objective (electronic filing system). I note that filing practices of the team means that documents would only be stored in electronic forms, and as such, searches of

physical records are not (and would not have been) conducted. Mr Anstey has confirmed that this would have been the approach in this matter.

15. Given the applicant's history, in particular taken with the applicant's indication that they were expecting a no documents decision in this matter, there is no reason to suspect that additional documents that might fall within the scope of the request exist.

16. Our Office submits that full and reasonable searches were conducted by the relevant team (PID team) at the time of processing this request. We acknowledge that our record-keeping practices at the time could have been better, and we reiterate that we have since implemented a new 'Search Minute' document that largely mirrors the OAIC's template search minute.

Yours sincerely

[redacted]

[redacted]
**Legal Officer**
**Legal Team – Defence, Investigations, ACT and Legal (DIAL) branch**

# Re: OAIC – MR23/00438 - Your IC review application about the Commonwealth Ombudsman [SEC=OFFICIAL]

From [redacted]

To OAIC - FOI DR<foidr@oaic.gov.au>

CC jodie.hanlon@ombudsman.gov.au, Information Access<Information.Access@ombudsman.gov.au>, foi@ombudsman.gov.au, iain.anderson@ombudsman.gov.au

Date Wednesday, August 30th, 2023 at 8:00 AM

Dear Ms Furlong

Thank you for your email.

I would like to proceed with the IC review application.

My reasons for seeking to proceed with the IC review application are set out below.

**Application for documents**

On 12 December 2022, Mark Anstey provided me with a record of his decision to terminate an investigation, under the *Ombudsman Act 1976* (Cth), into the way in which Kate McMullan of the Australian Public Service Commission conducted a public interest disclosure investigation.

As best as sense could be made of his meandering record of decision, it would appear that he terminated the investigation on three broad grounds.

First, Mr Anstey terminated the investigation under the *Ombudsman Act 1976* (Cth) because, in his opinion, the Office of the Commonwealth Ombudsman "cannot take any action that would cause an agency to reinvestigate a PID … because the PID Act does not provide a mechanism for a finalised PID investigation to be reopened."

Second, a key factor in Mr Anstey's decision to terminating the investigation under the *Ombudsman Act 1976* (Cth) was his view that no practical outcome could be obtained by further investigation of the complaint into corruption in the Australian Public Service.

Third, Mr Anstey terminated the investigation under the *Ombudsman Act 1976* (Cth) because, in his opinion, most of the key finding that Kate McMullan made were not unreasonable for her to make.

According to Mark Anstey:

> The PID Investigator concluded the material available indicated there had been a role review and the decision to reclassify these positions was made "*on the basis of the relative volume and complexity of work undertaken in the various registrars (sic)*". I accept that you dispute this. I also appreciate the reasons for the decision could have been better communicated to agency staff, as the PID Investigator noted, and similarly the internal records could have been more detailed. It nevertheless seems reasonably open to the PID Investigator to have concluded that there was a review conducted as the Agency Head had decided it was appropriate and necessary for some positions to be held at EL2 level and this decision was documented.

**Classifying and reclassifying roles in the Australian Public Service**

The *only lawful* mode of classifying, or reclassifying, a role is set out in rule 9 of the *Public Service Classification Rules 2000* (Cth).

An Agency Head must allocate an approved classification to each group of duties to be performed in an agency: *Public Service Classification Rules 2000* (Cth), r 9(1). In the context of the National Judicial Registrar & District Registrar vacancies in the Queensland and Western Australia District Registries of the Federal Court, the approved classification allocated to the groups of duties to be performed as part of the National Judicial Registrar & District Registrar roles was Senior Executive Band 1.

The allocation of an approved group of duties *must be based on the work value of the group of duties*, and the allocation of an Executive Level or Senior Executive Level classification to a group of duties *must be based on the work value of the group of duties described in the work level standards for that classification* issued, in writing, by the Australian Public Service Commissioner: *Public Service Classification Rules 2000* (Cth), rr 9(2) and 9(2A).

Parliament has made it unambiguously clear that an Agency Head "*must comply with the Classification Rules*":

Public Service Act 1999 (Cth), s 23(3).

**Jodie Hanlon's decision**

More than five months after I made a lawful request for access to documents, the Director of the Legal team in the Office of the Commonwealth Ombudsman finally got around to issuing reasons for decision in respect of my access request. The notice of decision is **attached**.

In her notice of decision Ms Hanlon states:

> **Decision**
>
> I am an officer authorised under s 23 of the FOI Act to make decisions in relation to FOI requests.
>
> We have searched our records for any documents this Office may hold, that would fall within the scope of your request. However, we have not identified any documents that meet the description of the documents you have requested. Having not located any relevant documents, I am satisfied that no documents within the scope of your request exist.

But, Ms Hanlon does not leave it there. She goes on to say:

> While there are other documents which could be considered relevant to the subject of your request the Office is not in the possession of a documented decision of the Agency Head of the Federal Court of Australia Statutory Agency evidencing the matters listed in your request.

The error in Ms Hanlon's decisions

The error in Ms Hanlon's decision is clear. Ms Hanlon has stated unequivocally that documents evidencing the only lawful mode of conducting a role review do not exist (much as the Federal Court has conceded).

Nonetheless, she then goes on to say that "there are other documents which could be considered relevant to the subject of your request …"

If there are other documents that, prima facie, could be considered relevant to the subject of my FOI request, Ms Hanlon was under a statutory duty to assess those documents to ***determine*** whether the documents are ***actually*** within or not within scope.

It is not open to Ms Hanlon to claim that documents could be considered relevant to the subject of my FOI request, and then to refuse to determine whether they are, or are not, in fact relevant to the subject of my FOI request because in so doing, she would not, for the purposes of her decision under the FOI Act, be assessing ***any and all*** documents ***relevant*** to the subject of my FOI request.

If these other documents were actually relevant to the subject of my FOI request, then Ms Hanlon was obligated to consider them as part of her FOI decision.

If these other documents were not actually relevant to the subject of my FOI request, then Ms Hanlon's comments are misleading and the falsehoods entailed in the obscurantist comment "there are other documents which could be considered relevant to the subject of your request" cannot be permitted to remain in the notice of decision.

**Request for the Information Commissioner**

I would like the Information Commissioner to compel the production of the "other documents which could be considered relevant to the subject of [my] request" and assess, according to law, whether or not the documents are actually relevant to the subject of my request.

If these other documents are relevant, I would like the Information Commissioner to make a lawful decision in respect of these relevant documents.

If these other documents are not relevant, I would like a decision confirming that there are no documents – full stop – relevant to my FOI request within the control of the Office of the Commonwealth Ombudsman.

**Request to the Commonwealth Ombudsman**

While I won't hold my breath, the Ombudsman is very much in a position to sort this issue out. He can, probably within a few minutes, settle the question of whether there are or are not "other documents which could be considered relevant to the subject of [my] request", and issue a lawful decision with clear reasons.

I have copied the FOI team in the Office of the Commonwealth Ombudsman so that Ms Hanlon's glaring error can be sorted out. I have also copied Ms Hanlon into this email so that she is personally aware of the error in her reasoning, and so that she can use this as an opportunity to learn from her errors.

**Final comments**

I wasn't born yesterday; I know why Ms Hanlon wrote that obscurantist comment about "other documents which ***could*** be considered relevant to the subject of [my] request". Unfortunately for her, I will not stand for weasel reasoning and nor should the OAIC.

Yours faithfully

D

------- Original Message -------
On Monday, August 28th, 2023 at 1:10 PM, OAIC - FOI DR <foidr@oaic.gov.au> wrote:

> Our reference: MR23/00438
> Agency reference: FOI-2023-10033
>
> By email: [redacted]
>
> Your IC review application about the Commonwealth Ombudsman

Good afternoon D

I refer to your application for an IC review of a deemed access refusal decision by the Commonwealth Ombudsman (the Agency).

On 22 August 2023, the Agency notified the Office of the Australian Information Commissioner (the OAIC) that it had provided you with a substantive decision regarding the documents you requested.

Can you please notify us by **15 September 2023** if you now wish to:

- Withdraw the IC review application, or
- Proceed with the IC review application.

Should you wish to proceed with the IC review application, please provide the following information by **15 September 2023:**

1. identify the aspect(s) of the agency or Minister's decision about which the review is sought
2. state why you disagree with the agency or Minister's decision
3. identify which documents you consider have been wrongly refused or which exemptions have been incorrectly applied

### Intention to decline to continue IC review

Please note that the Commissioner's written direction to IC review applicants provides that:

- where an applicant wishes to proceed with a review of a substantive [or revised] decision they **must explain** why they disagree with the decision and the basis on which they wish to proceed with the IC review [1.33], and
- applicants **must respond** to enquiries from the OAIC within the period provided unless there are circumstances warranting a longer period to respond [1.22].

Section 54W(c) of the FOI Act provides that the Information Commissioner may decide not to undertake, or continue to undertake, an IC review where an applicant fails to comply with a direction of the Information Commissioner.

Should we not receive a response from you to this email by **15 September 2023**, your IC review application will be finalised by a delegate of the Information Commissioner under s 54W(c).

If you have any questions regarding this email, please contact us via email at foidr@oaic.gov.au. Please quote the OAIC reference number at the top of this email in all correspondence.

Kind regards,

COMMONWEALTH OMBUDSMAN

Our ref: FOI-2023-10033
OAIC Ref: MR23/00438

22 August 2023

Emailed

Dear External Discloser

**Freedom of Information request – Documents do not exist**

I refer to your request of 11 March 2023 to this Office under the *Freedom of Information Act 1982* (FOI Act) for access to document/s in the following terms:

> *"documented decision" of the Agency Head of the Federal Court of Australia Statutory Agency evidencing:*
>
> *a) the role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar & District Registrar role in the Queensland District Registry of the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the Public Service Classification Rules 2000 (Cth);*
>
> *b) the role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar & District Registrar role in the Western Australia District Registry of the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the Public Service Classification Rules 2000 (Cth);*
>
> *c) the role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar role in the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the Public Service Classification Rules 2000 (Cth).*

I apologise for the delay in processing your request. Pursuant to s 15AC of the FOI Act your request was deemed to have been refused (access refusal decision).

The Office of the Australian Information Commissioner (OAIC) notified our Office on 3 May 2023 of an application for Information Commissioner review of the deemed access refusal decision made under s 15AC of the FOI Act. On 10 July 2023 we responded to OAIC's Preliminary Inquiries.

**Decision**

I am an officer authorised under s 23 of the FOI Act to make decisions in relation to FOI requests.

We have searched our records for any documents this Office may hold, that would fall within the scope of your request. However, we have not identified any documents that meet the description of the documents you have requested. Having not located any relevant documents, I am satisfied that no documents within the scope of your request exist.

I have consulted with the relevant area of the Ombudsman's Office and staff involved in the investigation with which this FOI request relates. They have conducted a search of all material relating to the investigation which might fall within the scope of your request. I am satisfied all reasonable steps have been taken to find the document.

If the document as expressly described in your request exists, it is not in the possession of our Office. While there are other documents which could be considered relevant to the subject of your request the Office is not in the possession of a documented decision of the Agency Head of the Federal Court of Australia Statutory Agency evidencing the matters listed in your request.

Subsection 24A(1) of the FOI Act permits refusal of a request for access to a document where all reasonable steps have been taken to find the document and the agency or Minister is satisfied that the document does not exist. Having regard to the outcome of our searches for relevant documents, I have decided to refuse your request under subsection 24A(1) of the FOI Act.

In reaching my decision, I have taken the following things into account:

- your correspondence outlining the particulars of your FOI request
- internal consultation
- the FOI Act
- the OAIC Guidelines.

***Complaints to the Office of the Australian Information Commissioner***

You may complain to the OAIC about action taken by the Ombudsman in relation to your FOI request.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Ombudsman's Office as the agency about which you are complaining.

You may lodge your complaint either:

- online at oaic.gov.au/about-us/contact-us
- by overland mail to GPO Box 5218 Sydney NSW 2001
- by filling out the online form accessible in the OAIC website - Enquiry Form (business.gov.au)

**Contacts**
If you require clarification of any of the matters discussed in this letter you should contact me on 1300 362 072 or at information.access@ombudsman.gov.au

Yours sincerely

Jodie Hanlon
Director
Legal Team

*Influencing systemic improvement in public administration*

# Failure to acknowledge receipt of freedom of information request according to law - access to documented decision of Agency Head

From Discloser

To foi@ombudsman.gov.au, Information Access<Information.Access@ombudsman.gov.au>

BCC PID<PID@ombudsman.gov.au>

Date Friday, March 31st, 2023

Dear Commonwealth Ombudsman

More than fourteen days have passed since I sent my FOI request.

My request is:

Given that Mark Anstey failed to readily identify the evidence upon which he based his finding that "there was a review conducted as the Agency Head had decided it was appropriate and necessary for some positions to be held at EL2 level and this decision was documented", I have decided to submit a freedom of information request for the document, which decision makers in the Federal Court of Australia have consistently refused to provide pursuant to subsection 24A(1) of the FOI Act.

Under the FOI Act, I request access to the "documented decision" of the Agency Head of the Federal Court of Australia Statutory Agency evidencing:

> a) the role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar & District Registrar role in the Queensland District Registry of the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the *Public Service Classification Rules 2000* (Cth);

> b) the role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar & District Registrar role in the Western Australia District Registry of the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the *Public Service Classification Rules 2000* (Cth);

> c) the role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar role in the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the *Public Service Classification Rules 2000* (Cth).

Please acknowledge receipt.

Yours faithfully

Discloser

------- Forwarded Message -------
From: Discloser
Date: On Saturday, March 11th, 2023
Subject: Freedom of information request - access to documented decision of Agency Head
To: foi@ombudsman.gov.au <foi@ombudsman.gov.au>
CC: Information Access <Information.Access@ombudsman.gov.au>, Ombudsman <Ombudsman@ombudsman.gov.au>

> Dear Commonwealth Ombudsman
>
> [1] On 12 December 2022, Mark Anstey provided me with a record of his decision to terminate an investigation, under the *Ombudsman Act 1976* (Cth), into the way in which Kate McMullan of the Australian Public Service Commission conducted a public interest disclosure investigation (see Annexure OMBR – 1).
>
> [2] As best as sense could be made of his meandering record of decision, it would appear that he terminated the investigation on three broad grounds.
>
> [3] First, Mr Anstey terminated the investigation under the *Ombudsman Act 1976* (Cth) because, in his opinion, the Office of the Commonwealth Ombudsman "cannot take any action that would cause an agency to reinvestigate a PID ... because the PID Act does not provide a mechanism for a finalised PID investigation to be reopened."
>
> [4] Second, a key factor in Mr Anstey's decision to terminating the investigation under the *Ombudsman Act 1976* (Cth) was his view that no practical outcome could be obtained by further investigation of the complaint.
>
> [5] Third, Mr Anstey terminated the investigation under the *Ombudsman Act 1976* (Cth) because, in his opinion, most of the key finding that Kate McMullan made were not unreasonable for her to make.
>
> [6] One of those key findings (as to which, please refer to Annexure EDR – 11) was that no disclosable conduct

had occurred in respect of the allocation of Executive Level 2 classifications, under rule 6 of the *Public Service Classification Rules 2000* (Cth), to two National Judicial Registrars & District Registrars, and five National Judicial Registrars, of the Federal Court of Australia because there had been "role reviews", such that, for the purposes of rule 9 of the *Public Service Classification Rules 2000* (Cth), Executive Level 2 classifications had been allocated to:

a) the National Judicial Registrar & District Registrar – QLD role;

b) the National Judicial Registrar & District Registrar – WA role; and

c) the National Judicial Registrar role.

[7] According to Mark Anstey (see Annexure OMBR – 1, page 3):

> The PID Investigator concluded the material available indicated there had been a role review and the decision to reclassify these positions was made *"on the basis of the relative volume and complexity of work undertaken in the various registrars (sic)"*. I accept that you dispute this. I also appreciate the reasons for the decision could have been better communicated to agency staff, as the PID Investigator noted, and similarly the internal records could have been more detailed. It nevertheless seems reasonably open to the PID Investigator to have concluded that there was a review conducted as the Agency Head had decided it was appropriate and necessary for some positions to be held at EL2 level and this decision was documented.

[8] Putting to one side the fact that the Australian Public Service Commissioner has explicitly, forcefully and unambiguously instructed public servants to "***[d]o not classify a job on the basis of the workload or how busy it is***" (see *Australian Public Service Classification Guide*, Part Four: Classification Management in Practice – Role evaluation principles), and that, despite the Commissioner's instructions, Kate McMullan concluded that "the material available indicated there had been a role review and the decision to reclassify these positions was made '*on the basis of the* ***relative volume*** *and complexity* ***of work undertaken*** *in the various registrars (sic)*'", it seems that Mr Anstey formed the view that it was "reasonably open to the PID Investigator to have concluded that there was a review conducted as the Agency Head had decided it was appropriate and necessary for some positions to be held at EL2 level and this decision was documented."

[9] Mr Anstey's claim that " Agency Head had decided it was appropriate and necessary for some positions to be held at EL2 level and this decision was documented" sits uneasily with several humiliating responses to publicly accessible freedom of information requests.

[10] In response to a freedom of information request for access to the "role evaluation records, prepared between 1 January 2017 and 31 December 2020, that show that the SES Band 1 classified National Judicial Registrar & District Registrar role in Queensland was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the Public Service Classification Rules 2000" (see Annexure OMBR – 2), an authorised decision maker, B Henderson, refused to provide access to the documents because the documents do not exist or cannot be found (see Annexure OMBR – 3).

[11] In response to a freedom of information request for access to the "role evaluation records, prepared between 1 January 2017 and 31 December 2020, that show that the SES Band 1 classified National Judicial Registrar & District Registrar role in Western Australia was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the Public Service Classification Rules 2000" (see Annexure OMBR – 2), an authorised decision maker, B Henderson, refused to provide access to the documents because the documents do not exist or cannot be found (see Annexure OMBR – 3).

[12] In response to a freedom of information request for access to "the role evaluation records, prepared between 1 January 2017 and 31 December 2020, that show that the SES Band 1 classified National Judicial Registrar role in the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the Public Service Classification Rules 2000" (see Annexure OMBR – 4), an authorised decision maker, B Henderson, refused to provide access to the documents because the documents do not exist or cannot be found (see Annexure OMBR – 5).

[13] Indeed, in response to a freedom of information request for "access to any and all documents (including but not limited to classification evaluation documents prepared for the 'Legal 2' and 'SES1' classification level registrar positions referred to in an Australian article published on 9 February 2022 titled Federal Court boss warned on job rule sidestep) that support acting assistant commissioner Kate McMullan's conclusion that, in relation to the 'National Judicial Registrar role', 'a role review process ... had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load'" (see Annexure OMBR – 6), an authorised decision maker, National Judicial Registrar & District Registrar Nicola Colbran, the most senior registrar in South Australia, set aside Registrar Claire Hammerton Cole's original decision (see Annexure OMBR – 7) on the grounds propounded in the internal review request (see Annexure OMBR – 6), and refused to provide access to the documents because the documents do not exist or cannot be found (see Annexure OMBR – 8).

[14] Naturally, Kate McMullan must have made the findings that there were role reviews for the:

a) Senior Executive Band 1 classified National Judicial Registrar & District Registrar role in Queensland; and

b) Senior Executive Band 1 classified National Judicial Registrar & District Registrar role in Western Australia; and

c) Senior Executive Band 1 classified National Judicial Registrar role,

on the basis of logically probative evidence and relevant evidence because she was under a legislative obligation to ensure that findings of fact were based on logically probative evidence (*Public Interest Disclosure Standard 2013* (Cth), s 12(1)), AND relevant evidence (*Public Interest Disclosure Standard 2013* (Cth), s 12(2)).

[15] Given that decision makers in the Federal Court have refused to provide access to records of role reviews

for the National Judicial Registrar & District Registrar – QLD role, the National Judicial Registrar & District Registrar – WA role, or the National Judicial Registrar role, I do wonder how it is that Mr Anstey found that "there was a review conducted as the Agency Head had decided it was appropriate and necessary for some positions to be held at EL2 level and this decision was documented."

[16] Contrary to the advice issued by the Administrative review Council (see *Administrative Review Best Practice Guide 4 – Decision Making: Reasons* (refer to www.ag.gov.au/legal-system/publications /administrative-review-council-best-practice-guide-4-reasons for a copy of the document), in which the following is noted on page 8:

> **The evidence on which the finding were based**
>
> A statement of reasons must refer to the evidence on which each material finding of fact is based. It is not sufficient simply to list all the documents that were considered in reaching the decision. The statement should identify the evidence that was considered relevant, credible and significant in relation to each material finding of fact.
>
> When referring to evidence it is not necessary to quote it or to provide a copy, so long as the evidence can be readily identified. The evidence might be identified by stating its source or nature, whichever is more intelligible and informative—for example, 'the medical report from Dr *X* dated 20 June'.
>
> The statement should demonstrate that each finding of fact is rationally based on evidence. If the evidence was conflicting, the statement should say which evidence was preferred and why.

Mark Anstey did not readily identify the evidence upon which he based his finding that "there was a review conducted as the Agency Head had decided it was appropriate and necessary for some positions to be held at EL2 level and this decision was documented."

[17] Apparently, Mark Anstey thinks himself above the Administrative Review Council and the Council's advice on good administrative decision making. That is surprising because the Administrative Review Council that issued *Administrative Review Best Practice Guide 4 – Decision Making: Reasons* was constituted by, among others:

a) Justice Downes of the Federal Court of Australia;

b) Dr Melissa Perry QC, as Her Honour, Justice Perry of the Federal Court of Australia, was then;

c) Prof John McMillan, the former Commonwealth Ombudsman;

d) Prof David Weisbrot, the former President of the Australian Law Reform Commission; and

e) Prof Robin Creyke, noted expert in Australian Administrative Law.

[18] Given that Mark Anstey failed to readily identify the evidence upon which he based his finding that "there was a review conducted as the Agency Head had decided it was appropriate and necessary for some positions to be held at EL2 level and this decision was documented", I have decided to submit a freedom of information request for the document, which decision makers in the Federal Court of Australia have consistently refused to provide pursuant to subsection 24A(1) of the FOI Act.

[19] Under the FOI Act, I request access to the "documented decision" of the Agency Head of the Federal Court of Australia Statutory Agency evidencing:

> a) the role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar & District Registrar role in the Queensland District Registry of the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the *Public Service Classification Rules 2000* (Cth);
>
> b) the role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar & District Registrar role in the Western Australia District Registry of the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the *Public Service Classification Rules 2000* (Cth);
>
> c) the role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar role in the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the *Public Service Classification Rules 2000* (Cth).

[20] Documents should be made available to me by return email to this email address.

Yours faithfully

Discloser